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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/694,463

10/27/2003

Rosemarie P. Denicola

PA-0019-L

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09/18/2007

STEVEN B. STEIN

114 OLD BLOOMFIELD AVENUE

PARSIPPANY, NJ 07054

EXAMINER

NGUYEN, TRINH T

ART UNIT

PAPER NUMBER

3644

MAIL DATE

DELIVERY MODE

09/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/694,463

Applicant(s)

DENICOLA

Examiner

Trinh T. Nguyen

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Amend. dated 7/5/07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 11 and 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 13 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-10,13,14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In this case, the claim 1 (currently amended) indicates "a continuous, non-composite, circumferentially closed tubular, substantially topologically plain, substantially non-rigid sheet liner" and "non-composite closed bottom end"; however, it is noted that the instant specification does not disclose and/or require such limitation. It is noted that the instant specification only discloses and/or requires a continuous tubular sheet liner 1 and a closed bottom end 4. Furthermore, it is not

understood what the term "non-composite" implies and/or intends since there is no disclosure to define the term.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-10,13,14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1: the phrases "a continuous, non-composite, circumferentially closed tubular, substantially topologically plain, substantially non-rigid sheet liner" and "non-composite" are confusing and unclear since there is no support in the specification and thus it is not understood what is being claimed.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, and 6-10 (as best understood) are rejected under 35 U.S.C. 102(b) as being anticipated by Henry (US 5241784).

For claims 1, 9 and 10, Henry discloses a protection device comprising: a continuous, non-composite, circumferentially closed tubular, substantially topologically plain, substantially non-rigid sheet liner with an interior side, an exterior side, an integral, non-composite closed bottom end and open top end and a plurality of

apertures wherein the apertures are positioned in a pattern which is regular and repeating and is in an alternating anti-parallel orientation (see Figure 6) and the apertures are capable of preventing passage of vermin and permitting passage of water (Note that the Examiner is interpreting the term "continuous" as "attached together in repeated units" as defined in *The American Heritage Dictionary of the English Language, Fourth Edition* copyright © 2000 by Houghton Mifflin Company and *The Random House Unabridged Dictionary*, © Random House, Inc. 2006 and the term "integral" as "consisting or composed of parts that together constitute a whole" as defined in *The Random House Unabridged Dictionary*, © Random House, Inc. 2006 (on line version at Dictionary.com)). Further note that both Henry's and Applicant's bottom end are comprised of plastic.

For claim 6, Henry further discloses a plurality rows of apertures extending generally from the top end to the bottom end.

For claim 7, Henry further discloses a plurality of diagonally shaped apertures.

For claim 8, Henry further discloses alternating rows of diagonally shaped apertures wherein the diagonal shape is generally oriented from the top end to the bottom end in a left to right direction in a first row and wherein the diagonal shape is generally oriented from the top end to the bottom end in a right to left direction in a second row.

8. Claims 1,2,4, and 5 (as best understood) are rejected under 35 U.S.C. 102(b) as being anticipated by Takita (US 5564223).

For claim 1, Takita discloses a protection device comprising: a continuous,

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non-composite, circumferentially closed tubular, substantially topologically plain, substantially non-rigid sheet liner with an interior side, an exterior side, an integral, non-composite closed bottom end and open top end and a plurality of apertures wherein the apertures are positioned in a pattern which is regular and repeating and is in an alternating anti-parallel orientation (see Figure 1A attached at the end of this office action, note that the parallel lines of the apertures are crossed and therefore, it is anti-parallel oriented) and the apertures are capable of preventing passage of vermin and permitting passage of water (Note that the Examiner is interpreting the term "continuous" as "attached together in repeated units" as defined in *The American Heritage Dictionary of the English Language, Fourth Edition* copyright © 2000 by Houghton Mifflin Company and *The Random House Unabridged Dictionary*, © Random House, Inc. 2006 and the term "integral" as "consisting or composed of parts that together constitute a whole" as defined in *The Random House Unabridged Dictionary*, © Random House, Inc. 2006 (on line version at Dictionary.com)).

For claims 2, 4, and 5, Takita further discloses a closure means wherein the closure means is a tie (10).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Henry (US 5241784) in view of Beers (US 1464801).

As described above, Henry discloses most of the claimed invention except for an anchor means.

Beers teaches a concept of using post member (3) as an anchor means. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Henry so as to include the use of an anchor means, in a similar manner as taught in Beers, since to do so would allow the user to anchor the device in a more stable position and/or location and thus prevent the device from tipping over.

11. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henry (US 5241784) in view of Anderson (US 4628634).

As described above, Henry further discloses the steps of inserting of a plant into the device and inserting of soil into the device. However, Henry lacks the step of inserting the device into the ground.

Anderson teaches a similar device as that of Henry in which Anderson discloses a step of inserting the device into the ground (see Figure 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Henry so as to include the step of inserting the device into the ground, in a similar manner as taught in Anderson, since inserting the device into the ground would allow the user to replant the device more easily and efficiently.

Response to Arguments

12. Applicant's arguments filed 7/5/07 have been fully considered but they are not persuasive.

13. Applicant argues that Henry is an assembly of multiple, separate parts, Applicant's argument is acknowledged. However, it is noted that the Examiner is interpreting the term "integral" as "consisting or composed of parts that together constitute a whole" as defined in *The Random House Unabridged Dictionary*, © *Random House, Inc. 2006* (on line version at Dictionary.com). Therefore, Henry discloses a plurality of parts (i.e., an interior side, an exterior side, an integral closed bottom end, and an open top end) that together constitute a whole (i.e., a tubular sheet liner).

14. Applicant further argues that Henry requires additional components (i.e., folded or corrugated) in the assembly, Applicant's argument is acknowledged. However, it is noted that Applicant's claim language indicates "comprising" which is an open term in which it means that the device can include other elements in addition to the main element.

15. Applicant further argues that Henry does not teach diagonally shaped apertures, Applicant's argument is acknowledged. However, it is noted that in Figure 6, Henry shows a plurality of diagonally shaped apertures.

16. Applicant further argues that Takita does not disclose antiparallel orientation of the apertures, Applicant's argument is acknowledged. However, it is noted that Figure 1A (attached at the end of this office action) shows the antiparallel orientation (note that

the parallel lines of the apertures are crossed and therefore, it is anti-parallel oriented) of the apertures.

17. Applicant further argues that Takita requires additional components (i.e. overlapping folds and notches) in the assembly, Applicant's argument is acknowledged. However, it is noted that Applicant's claim language indicates "comprising" which is an open term in which it means that the device can include other elements in addition to the main element.

Conclusion

18. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trinh T. Nguyen whose telephone number is (571) 272-6906. The examiner can normally be reached on M-F (10:00 A.M to 6:00 P.M).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on (571) 272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Trinh T Nguyen
Primary Examiner
Art Unit 3644

9/8/07

FIG. 1

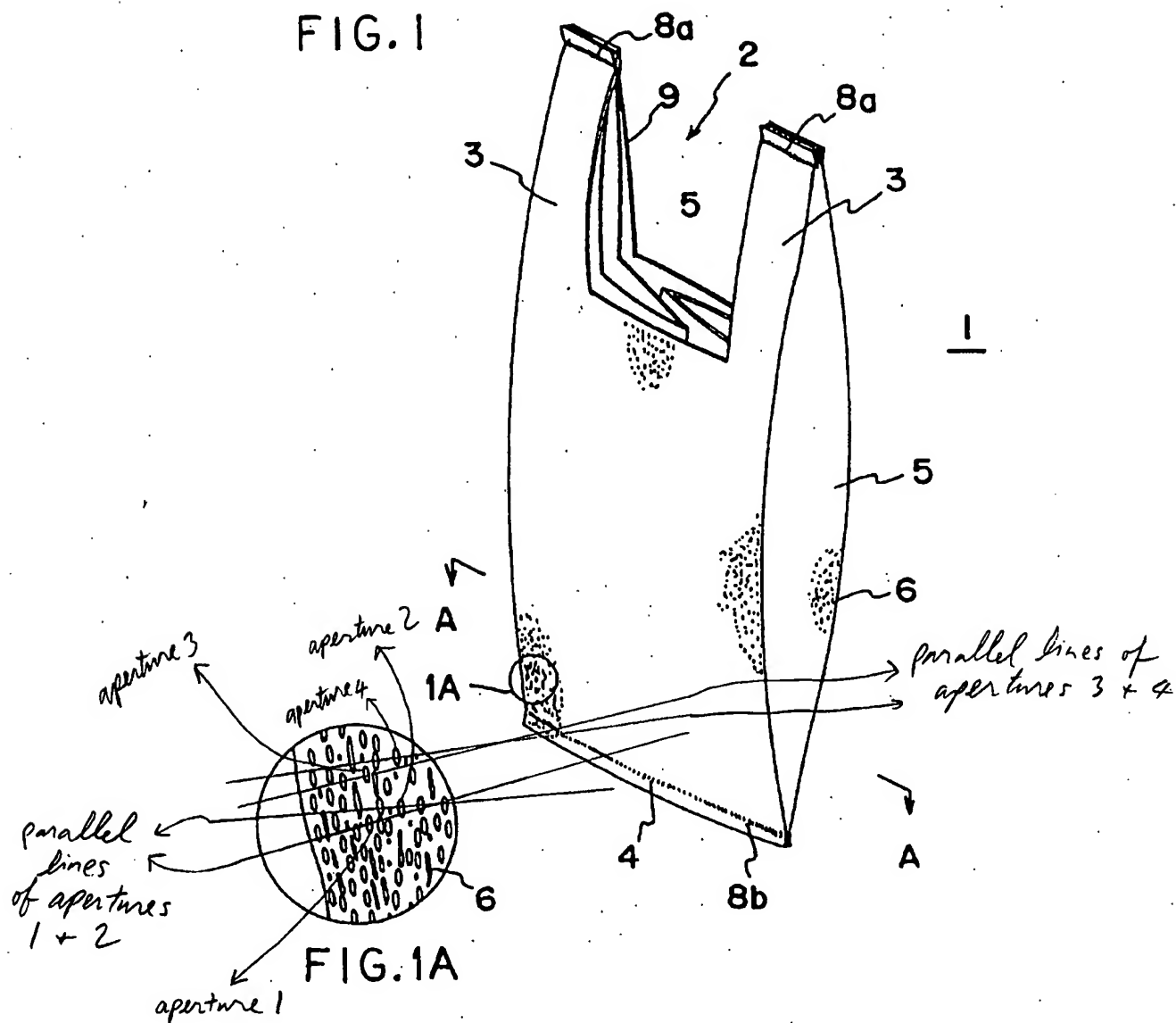


FIG. 2

